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INFO RUCNMEM/EU MEMBER STATES COLLECTIVE PRIORITY  
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S E C R E T SECTION 01 OF 09 BRUSSELS 000616

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TREASURY FOR TFFC, OFAC AND OIA

E.O. 12958: DECL: 04/28/2019  
TAGS: [ETTC](#) [KTFN](#) [PTER](#) [EFIN](#) [KCRM](#) [KJUS](#) [KHLS](#) [UNSC](#) [PINR](#)  
PHUM, KPAO, FR, UK, EUN  
SUBJECT: EU TERRORISM SANCTIONS: TROUBLE CONTINUES

REF: A. BRUSSELS 41  
[1](#)B. LAMBERT-SNYDER EMAIL 5/29/2008  
[1](#)C. SNYDER-JALLORINA EMAIL 10/22/2008  
[1](#)D. BRUSSELS 101  
[1](#)E. BRUSSELS 517  
[1](#)F. BRUSSELS 492  
[1](#)G. BRUSSELS 494  
[1](#)H. BRUSSELS 493  
[1](#)I. BRUSSELS 485  
[1](#)J. BRUSSELS 168  
[1](#)K. THE HAGUE 269

Classified By: USEU Econ Minister-Counselor Peter H. Chase for reasons  
1.4 (b), (d), (e).

[1](#)1. (U) This message contains an urgent Action Request (paras  
31-32). Please see also Summary and other Action Requests  
paragraphs 6-7, 12, 17-18, 23, 25, 29 and 37.

[1](#)2. (S//NF) SUMMARY/COMMENT: Due in part to recent European  
court rulings, EU implementation of UN and autonomous  
sanctions against Al-Qaida, Taliban, and other terrorists  
continues to diverge from the U.S. and UN:

- growing EU reluctance about autonomous Al-Qaida or Taliban  
designations, absent UN 1267 committee action;
- growing EU pressure for independent review by a UN body of  
UNSC sanctions designations;
- EU belief that listed parties must be provided the  
rationale at the time of designation;
- doubts that U.S. designation decisions can serve as a  
legal basis for EU designations; and
- whether U.S. designation procedures adequately protect  
individual rights.

Against this backdrop, the EU is redrafting its law  
implementing UNSCR 1267 sanctions against Al-Qaida and  
Taliban to comply with the 2008 EU court judgment annulling  
the prior Kadi and Al Barakaat designations. To some  
contacts' dismay, the European Data Protection Supervisor is  
also asserting authority to review all designation  
legislation to verify EC compliance with protection of the  
designees' personal information. Meanwhile, legal challenges  
continue to threaten the EU's use of targeted economic

sanctions as an instrument of international security and foreign policy.

13. (S//NF) As with all economic sanctions measures, U.S. counter-terrorism sanctions will be most effective if implemented with Europe's full participation. The Administration will face continued challenges to keep the U.S. and EU on the same page, through the UN or autonomously. To address these issues, we need to:

- more clearly explain our decision-making process for unilateral designation of individuals before they have been designated under UNSCR 1267, to overcome EU beliefs that Al-Qaida / Taliban names can only be designated by the UN;
- clearly explain our position on an independent UN sanctions review panel;
- consider ensuring simultaneous EU freezes by delaying UN 1267 designations until public reasons are ready for issuance with UN designation;
- keeping tabs on EU implementation of UN sanctions, among others, by requesting that UN sanctions committees track and report on UN member state implementation to increase sanctions' effectiveness; and
- formally detailing our procedures' protection of individual rights in future designation requests and notifications.

14. (C) In addition, the USG must urgently verify that the UN 1267 Committee has completed the necessary work to provide the EU reasons for the Ayadi and Hassan designations, or

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these designations will fall from the EU implementation list in the coming weeks. In this context, we should consider supporting the EU legal team defending new UN designations in EU courts, including the upcoming Kadi and Al Barakaat cases; the latter will likely test the legal viability of reformed UN 1267 sanctions procedures for EU implementation. END SUMMARY/COMMENT.

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1373 vs. 1267: Who Should Designate Al-Qaida Terrorists? And When?  
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15. (C//NF) Over the past year, the EU appears to have changed approach to a position in which the EU only considers designating targets linked to Al-Qaida or Taliban after a UN blessing. Affected examples include Lashkar-e-Tayyiba (LeT), Gulf-based Al-Qaida, Revival of Islamic Heritage Society Kuwait, Somalia-related Al Shabaab -- in short, many of our highest priority potential counter-terrorism targets (Refs E-H). USEU has informally implored EU institutions to reconsider this apparent new stance, particularly in the wake of the Mumbai attacks (Ref E). The Commission concurs with USEU's unofficial position and agrees it is an issue of political will, not one of law. The Commission is willing to propose new legislation that would definitively close the imagined gap in legal basis should the Council fail to change its position. Meanwhile, post-Mumbai, we have persuaded the Council Secretariat to begin reviewing the stance taken under the French EU Presidency. The EU-27 have not recently discussed this issue in any detail.

16. (C) ACTION REQUEST/COMMENT: As detailed REF E, USEU recommends that the May 29 U.S.-EU Terrorist Financing Troika meeting in Prague explore the interplay between UNSCRs 1267 and 1373. How do UN and autonomous designations relate to each other in countering Al-Qaida and Taliban financing? Should the U.S. and EU be willing to take autonomous measures to preempt terrorist attacks if/when UN action is slowed or stalled, perhaps indefinitely? When the USG takes autonomous action in advance of action by the UN, what factors do we weigh in making this decision? In such circumstances, do we also want to ask the EU to take similar autonomous action?

Procedurally, how could the EU gauge timing at the UN 1267 committee to decide whether to move ahead? How can the U.S. and EU best cooperate to meet such challenges and implement the spirit of both UNSCRs 1373 and 1267?

¶7. (C) USEU would also welcome official guidance on our position for use in advocating this issue with EU interlocutors. EU TFCOs might also draw from such points in informal discussions in capitals or in future designation demarches. A preliminary U.S.-EU troika discussion should reveal whether a nonpaper on this issue to the EU-27 might be desirable. END ACTION REQUEST/COMMENT.

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Who Can Review UNSC Sanctions Decisions?  
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¶8. (S//NF) Several national and EU court verdicts have threatened the principle of UN supremacy over EU law and the established international order, jeopardizing the use of targeted economic sanctions as a national security and foreign policy tool in the EU. Sanctions countering proliferation, terrorism or human rights abusers in Iran, Zimbabwe, or Burma are all subject to ongoing legal challenges in EU courts. UN sanctions reforms such as UNSCR 1822 notwithstanding, many Europeans subscribe to the view that UN sanctions are conflicting with fundamental human rights.

¶9. (S//NF) A growing cohort of Europeans hope that the new  
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U.S. administration will adopt their proposal for some form of independent review of UN sanctions designations. They were undeterred by our arguments against this approach under the previous administration. The EU's foreign affairs terrorism working group (COTER) continues to debate the issue, but a consensus EU position would only be possible with the consent of France and UK, who traditionally guard UNSC prerogatives in EU venues.

¶10. (S//NF) The UK has signaled openness to consider further proposals, however. Some EU and Member State officials are convinced that UN-level independent redress must be afforded to sanctioned individuals, at least in the terrorism context. Some of the same smaller member states who argued for UNSC checks and balances in 1945 in San Francisco cite national and EU case law that questions the legitimacy of targeted UN sanctions to bolster their position. Public conferences routinely feature European officials who question the legitimacy of the UN process. Per REF K, the Dutch will host the next major exploration of proposals May 25-26 in the Hague: "Improving the Effectiveness and Legitimacy of UN Targeted Sanctions." We expect the July-December 2009 Swedish EU Presidency will continue to press this concept for the duration of 2009.

¶11. (S//NF) EU opponents of the UN-level independent review proposals interpret the same landmark 2008 EC Court of Justice (ECJ) decision annulling UN 1267-related Kadi and Al Barakaat designations by the EU as giving the UN a last chance to fix its negligent procedures, but not UN sanctions' death knell. They counter that, if UNSCR 1822 is implemented properly, the EU court itself could perform the function of a "check" on UN decisions against individuals and provide their fundamental EU right to independent judicial review. If UNSCR 1822 is implemented badly, however, the EU can expect to lose future UN 1267-related cases. The first tests of the new procedure should be this year with the new Kadi and Al Barakaat challenges pending before the lower EU Court of First Instance (CFI). However the CFI rules, the decisions can be challenged for a final decision by the higher court (ECJ). Thus we should have clarity on the court's views of the reformed UN procedures in the next couple of years. EU sanctions policy experts are mindful of the potential spillover implications of these rulings on all sanctions

programs, including country-based policies, on both UN and autonomous EU sanctions tracks.

¶12. (C) ACTION REQUEST/COMMENT: USEU joins REF K Action Request for clarification and guidance on the Administration's policy position on independent review of UN sanctions for use in advocating with European interlocutors. We should identify appropriate fora to exchange our respective concerns with the EU institutions and member states on this sensitive issue, such as the May 25 meeting in the Hague, the margins of the May 27-28 U.S.-EU sanctions practitioners' workshop in Prague, and the May 29 U.S.-EU terrorist financing troika in Prague. We should continue to refocus European attention to providing sufficient resources for existing reform commitments (e.g., UNSCR 1822). We should dissuade governments (and UN officials) from unhelpful public remarks undermining the legitimacy of the UN and international law. This point should be flagged at G8 Lyon-Roma meetings as well. We should explore in detail whether a more concerted public diplomacy campaign by the UN, with U.S. and EU support, could influence the public and courts to better understand recent improvements to UN sanctions procedures. The USG should anticipate the possibility of UN member states' courts forcing a choice between compliance with UNSC or domestic law, bearing in mind that all targeted sanctions, and ultimately all UNSC decisions, are potentially implicated. We should do our part to ensure the UNSCR 1822 process is meaningful and bolsters the credibility of our vital terrorism sanctions programs. END ACTION REQUEST/COMMENT.

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No More EU Implementation of UN Al-Qaida/Taliban  
Designations Until Reasons Are Provided  
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¶13. (C) The third problem arises from perceived legal obligations imposed by EU courts, which the EU hoped UNSCR 1822 reform procedures would correct. Following the ECJ's September 2008 Kadi and Al Barakaat judgment, the EU will no longer implement new UN Al-Qaida / Taliban sanctions designations until the EU has received the reasons for the UN listing. (NOTE: Due partly to domestic constitutional and legal constraints of many EU countries, UNSCR 1267 is implemented at EU, not national member state, level. END NOTE.) Ref E details the saga of the EU's March 6 designation of four LeT individuals, nearly a year after the U.S. domestic designation and two months after the UN action. Thus, any EU member state relying exclusively on EU-level implementation of UNSCR 1267 would have taken no action until well after the Mumbai attacks, linked to the LeT, if not these specific individuals. This same fate befell the February 4 UN 1267 designation of Boyaseer, who cleared the EU designation process on April 1 after the Commission finally received the public statement of reasons in mid-March.

¶14. (C) Commission and Council Legal Services agree that the EU cannot decide to designate an individual or entity as a terrorist, even when EU member states are so required by UN law, without first knowing the specific reasons upon which they are making the decision to designate. As they explained to USEU, the publicly releasable reasons must be available to the designee effectively simultaneously with the decision. Otherwise, the designee could not effectively exercise his full due process rights to challenge the reasons for the EC's decision within two months of the date of the act. If the Commission were to designate the individual, then waited three months for the 1267 Committee's reasons, the aggrieved individual would have already lost the chance to effectively challenge the reasons for his designation before the EC court. A court annulment of the designation, if not the entire EU 1267 implementation process, would be a foregone conclusion. Receiving the reasons after a decision had been

made could also be construed as moving the goalpost and add to due process problems.

¶15. (C) Both Council and Commission lawyers are insisting on the EU's having received the UN's final, official reasons before the EU will issue a designation. A Council Secretariat sanctions contact interprets UNSCR 1822 operative paragraphs 12 and 13 to mean that a detailed statement of case must be ready from the time of proposal, including parts marked for public release. The EU understands that, under an arrangement reached with the previous Belgian chair of the 1267 committee, the EU will receive both a Statement of Case and Narrative Summary for future listings. One contact concedes there may be room for interpretation on timing required for the final statement and narrative per 1822, and requested clarification of the U.S. interpretation on this point. (COMMENT: USEU would not be surprised if some EU actors soon applied this same interpretation of requiring specific reasons prior to other targeted UN sanctions designations. END COMMENT.)

¶16. (C//NF) The Commission and Council Secretariat are annoyed that EU members of the UN 1267 committee are not facilitating better communication between New York and Brussels. Both have expressed deep appreciation for the many recent instances when the U.S. back-stopped the EU's internal communication failures. The French EU Presidency refused to permit the EU's Counter-Terrorism Coordinator to meet the UN 1267 committee to discuss areas of mutual concern and interest last year. The Commission depends almost entirely

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on the EU Presidency to convey information to or from the UN, and to ensure UN-EU cooperation is practicable. They observe that some presidencies are better able than others to ensure close communication.

¶17. (C//NF) ACTION REQUEST/COMMENT: The USG should consider placing a hold on future UN 1267 designations until both the statement of case and public narrative summary are ready for simultaneous issuance at the time of designation. Otherwise we should expect those EU Member States who rely on the EU-level designation to delay implementation of such cases, risking asset flight in the interim. U.S. legal and sanctions experts should informally discuss a way forward on these issues with Council Secretariat counterparts (see also below). France and the UK are smarting from being singled out by the Court, Commission, Council Secretariat, and European Parliament as holding extra responsibility to ensure effective (and compatible) UN-EU coordination. Nevertheless, given their institutional memories, relative resources, and permanent UNSC status responsibilities, we should continue to request French and British support in enabling EU implementation if sanctions are to be at all effective in Europe.

¶18. (C//NF) To raise awareness of this issue and better understand the extent of the problem, the USG could invite the UN 1267 committee to systematically track and report member state implementation. At a minimum, PermReps could be required to report the effective date of sanctions implementation in their home jurisdiction; if not report instances of frozen assets, compliance breaches, and related prosecutions. Gains in UN accountability for membership compliance would outweigh any embarrassment over rare instances where U.S. implementation fell short. Such an exercise could be valuable to all UN sanctions committees where it is not yet systematically the case. Gaining a better picture of UN compliance status (including within the EU) could better improve multilateral sanctions implementation. END ACTION REQUEST/COMMENT.

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Does the U.S. Count as a "Competent Authority?"  
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¶19. (S//NF) EU autonomous terrorist designations must be based on a decision by a competent authority. Common Position 2001/931/CFSP Article 1.4 defines this as a decision by a judicial or equivalent competent authority, deciding to investigate, prosecute, or convict the designees. Unfortunately, no one is sure whether U.S. designations under the Immigration and Nationality Act or our various Executive Orders technically meet the standard of a "competent authority" as defined by EU designations law. The EU courts have yet to test this.

¶20. (S//NF) Not knowing for certain has not stopped the EU from using U.S. designations as its sole legal basis for autonomous listing in some prominent EU decisions in the past, including Hamas. (NOTE: A UK designation was also used to underpin the Hamas military wing's EU designation, but the U.S. decision was the only basis for Hamas as an entity. The U.S. designation was also the sole legal basis for the EU designation of Al Aqsa Martyrs Brigade. END NOTE.)

¶21. (C//NF) However, the EU's mood for adopting new designations is increasingly cautious (Refs A, D, E, and I). In any event, contacts insist any new designations must include solid evidence, or consensus will be difficult.

¶22. (C//NF) A Council Secretariat legal service contact cautioned that the further the EU moves from the strict definition of "competent authority," the greater the risk that an EU court will examine whether such authorities'

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decisions can be used as the basis for designation. EU officials and member states diverge over which cases merit our testing the boundaries. Most agree the ideal process would be an EU member state's first designating a given entity or individual, then citing the U.S. domestic designation as further support for an EU-level designation.

¶23. (C//NF) ACTION REQUEST/COMMENT: As the arguments noted above indicate, the EU is increasingly leery about implementing U.S. autonomous designations, especially given recent EU case law on due process (Ref I and next section below). Washington experts could helpfully assist USEU in explaining whether U.S. terrorism designations should qualify, in our view, as an "investigation" of the individuals and entities in question as defined by EU designation law. U.S. and EU sanctions legal experts should explore potential implications of this issue before it is subjected to judicial or political scrutiny. (For this reason, it should probably not yet feature in the formal troika discussions.) Perhaps this could satisfy EU lawyers' unease over whether the various U.S. designation authorities meet their interpretation of the EU legal standard. If not, the USG may wish to focus on encouraging key EU member states to make a national level designation of priority targets. Such designations in turn could be used as an EU-level basis, perhaps further bolstered by our designation. U.S. designation notifications should in turn be geared to this end, case by case. END ACTION REQUEST/COMMENT.

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Do U.S. Sanctions Protect Individual Rights?  
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¶24. (C) Another factor that may be impeding EU adoption of autonomous U.S. terrorism designations is lingering EU suspicion about whether the U.S. sanctions system adequately protects individual rights. The EU courts' taking the Council to task on various sanctions due process challenges over the past four years, and the generally negative European views of recent U.S. counter-terrorism policies and operations, have led some countries to question the legitimacy of U.S. designations. Over recent years, the U.S.-EU terrorist financing practitioner workshops have educated a cadre of experts on our procedural protections,

but EU personnel turnover in this field remains high. Several contacts have encouraged U.S. designation notifications (both demarches and press releases) to include a standard paragraph explaining options for the designees' redress. Such demonstrated attention to protecting designees' procedural rights might help sway some of the designation-wary states, e.g. Sweden (the next EU Presidency).

125. (C) ACTION REQUEST/COMMENT: As discussed Ref I, to address these concerns, the U.S.-EU terrorist financing experts should perhaps revisit the June 18, 2007 joint U.S.-EU statement "Fair and Clear Procedures in Targeted Sanctions to Combat Terrorist Financing." How have we in fact implemented the commitments we undertook two years ago? Should we draft an updated public outreach statement? Further, we should make it a practice to incorporate certain standard phrases extracted from such statements into our designation notification demarches. Both steps might help assuage certain EU decision-makers' concerns over adopting U.S. autonomous designations. END ACTION REQUEST/COMMENT.

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Commission vs. Council: Internal EU Fight  
Over Future of UN 1267 Implementation  
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126. (C) Complicating all these issues are increasing battles in the EU. Ending months of increasing irritation, on April 22 the Council finally received the Commission's proposed new

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draft legislation to institutionalize changes required by the European Court of Justice September 2008 rulings overturning Kadi and Al Barakaat designations (Ref J, paragraph 11). The external relations working group will first review the proposal on April 30. The Commission refused to propose that it cede implementation authority for UNSCR 1267 back to the Council, which would be an unprecedented reversal of previously delegated powers. The Council will have to unanimously override the draft legislation to arrogate the authority for itself once more. The Parliament will also have to be consulted before the legislation can be adopted, but its opinion will be non-binding. The EU Data Protection Supervisor asserts he must also be consulted because the designations involve personal information through EU legislation. The Council cannot force the Parliament to provide an expedited opinion on the proposed legislation, and the Parliament will be largely on recess until the end of the election and summer seasons. Realistically, this means the earliest the EU could adopt a new UNSCR 1267 implementation law would be this fall.

127. (C) Contacts assert that, no matter which branch of the EU implements UNSCR 1267, there will always be an inherent bureaucratic delay in enacting asset freezes. Under a Council authority scenario, the External Relations working group would confirm a Secretariat-drafted designation for approval by the Permanent Representatives and then the Council. Even under the written procedure, this would take 4-5 days and require translations into all EU languages. Our contacts stress, however, that in most cases this would still be faster than many if not most legislative processes in the individual 27 EU member states.

128. (C/NF) The Council Secretariat (strictly protect) is adamant that the Council External Relations working group reach consensus on the new implementation methods during the Czech EU Presidency. The incoming Swedish Presidency is expected to be less sympathetic to the entire UNSCR 1267 process and may impede progress. The Council Secretariat wants the new legislation to simplify and directly implement UNSCR 1267 (provided its reforms are being properly implemented, see above), via the Council's staff.

129. (C) ACTION REQUEST/COMMENT: While internal EU

legislation is their own affair, the USG should raise areas for their consideration regarding how we see the UN 1267 process unfolding. We have a stake in seeing UNSCRs implemented as fully and effectively as possible. USEU will pursue an informal discussion between U.S. and EU Council Secretariat experts on UNSCR 1267 for collegial comparison of lessons learned and interests. END ACTION REQUEST/COMMENT.

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EU Terrorist Court Challenges Ahead:  
Please Help (Ayadi), Almost Prepared (Othman),  
One to Watch (Al Aqsa),  
Care to Join (Kadi and Al Barakaat)?  
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¶30. (U) Lastly, the pipeline is filled with upcoming EU lawsuits related to UN sanctions. Select cases follow:

Ayadi, Hassan, and Othman  
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¶31. (C) The Commission would like to know whether the UN 1267 Committee has finalized the public reasons behind Ayadi's designation, which they understood to have been provided, at least in part, by the U.S. Until the Commission receives this document, it cannot begin the process for a re-designation (see above). The European Court of Justice is expected to annul the EU's existing Ayadi designation (in accordance with the Kadi and Al Barakaat case law) as soon as the Council completes its written proceedings (due by May 4

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to the ECJ). Because several weeks are required in order to meet the notice requirements on re-listing, the Commission must receive this document urgently or no re-designation will be possible before the inevitable ECJ annulment. No appeal is possible under the circumstances presented. (ACTION REQUEST: USG should verify that the 1267 Committee has completed the necessary work on Ayadi if we want the EU to maintain this designation. END ACTION REQUEST.)

¶32. (C) The Hassan case could be ruled on any day because the written procedure has already closed. The ECJ may time this annulment to coincide with Ayadi's, however. (ACTION REQUEST: The USG may wish to confirm that the UN procedure for issuing reasons is completed for Hassan, in case assistance is required. END ACTION REQUEST.)

¶33. (C//NF) The Commission notified Omar Mahmoud Uthman (Othman) of his right to request the grounds for his UN listing via publication in the Official Journal on April 3. The EU expects to receive comments back, challenging his designation. Nevertheless, the EU is on track to have a new decision to maintain his designation before the lower EU court annuls the prior designation (following the Kadi and Al Barakaat precedent).

¶34. (C//NF) NOTE: The notice included a new reference required by the EU Data Protection Supervisor (EUDPS), drawing attention to Uthman's rights to redress in accordance with Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Certain contacts are concerned that this new EUDPS assertion of jurisdiction over EU terrorism designations may present yet another layer of bureaucracy impeding immediate freezing of terrorist assets and undercutting the sanctions' effectiveness. The Commission appears to have conceded that its hands are tied in this regard. It is unclear how the Council will react, but this issue should be dealt with in the revision of their law implementing UNSCR 1267. END NOTE.

Kadi and Al Barakaat Redux: Care to Join?  
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¶35. (C//NF) A contact asked whether the UN or USG might wish to intervene in upcoming UNSCR 1267-related cases filed by Kadi and Al Barakaat, challenging their EC re-designations last year. The Commission recommended that the Council share Kadi and Al Barakaat's responses to their EU designations with the UN 1267 committee, but the Council has not decided whether to do so. USEU has not obtained copies of the materials: both Commission and Council Secretariat contacts are keeping the materials internal for now. If we joined the case to support the EU defense of its UN obligations, we might be granted access to otherwise privileged court documents. No hearing is set yet, but Kadi has requested an expedited procedure. The court required Al Barakaat's lawyers to correct errors in their application, so EU institutions have yet to receive the formal complaint. Though not directly party to either case, the Council has made application to intervene in support of the Commission for the Kadi and Al Barakaat designations.

¶36. (C//NF) The above restrictions notwithstanding, a contact confided that Kadi had challenged his EU re-designation on the grounds that Council Regulation (EC) No 881/2001 Article 7 Paragraph 1 did not provide sufficient legal basis for the Commission's decision to re-designate. Moreover, he argued that the UN decision was largely based on a U.S. decision which Kadi also challenges. Several contacts warned that Kadi had made some convincing points, and the EU courts may find them sufficiently compelling to overturn the UN designation on substantive, not just procedural, grounds. Such an event would be a first for either of the EU terrorism

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sanctions tracks. Thus the Kadi case may present the first EU court test on the sufficiency of the substance supporting an EC terrorist designation, not just procedure.

¶37. (C) ACTION REQUEST: Please advise if Washington would be interested in USEU's pursuing details about how the USG could join or support the EU legal team in defending sanctions against these or other individuals. END ACTION REQUEST.

Sison and Al Aqsa  
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¶38. (SBU) The next Sison case should be heard on April 30. The next Al Aqsa case may be heard by summer (in Dutch language).

Newest 1267 Challengers: Maftah and Elost  
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¶39. (C) A contact mentioned two (unnamed) individuals had filed cases before EU courts challenging their new designations under UNSCR 1267 on April 2. USEU believes these may be Court of First Instance cases T-101/09 ("Maftah v Council and Commission") and T-102/09 ("Elost v Council and Commission").

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COMMENT: Keeping Sanctions Off Life-Support  
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¶40. (SBU) U.S. economic sanctions are rarely effective unilaterally, and we cannot risk losing the use of one of our few non-military coercive tools because EU courts believe they are somehow illegitimate.

¶41. (SBU) The EU generally also wants to maintain this tool, although many in the EU differ over how it is best deployed. The United States has an interest in actively engaging the EU to overcome the gap that is developing between us on this issue. We must support and supplement existing EU sanctions measures and designations by sharing substantive information on our respective programs and targets, encouraging identification of complementary goals and benchmarks, and

comparing strategies to protect these policies from legal challenge. To keep the U.S. and EU in sync, this effort will continue to require coordination between relevant geographic and functional bureaus within State and the field, and our sister agencies across the USG.

¶42. (SBU) U.S. lessons learned from the past decade of trending away from country-based to targeted sanctions are not universally understood by Europeans, let alone the rest of the UN community. Increased public and private diplomacy might help. The Financial Action Task Force and FATF-style bodies are increasing awareness of the world's technical experts, but this is not fully translating into policy-makers' decision-making.

¶43. (SBU) Sanctions skeptics across the EU must be persuaded to dedicate the necessary attention, energy, and resources to prevent erosion of this key foreign policy tool. We need to enlist partners' active attention to nurture the full sanctions lifecycle. Without the political will and commitment of EU leaders in the coming year, and a coordinated U.S. interagency strategy to effect this, we will fall short of our intended mark on vital national security and foreign policy goals. END COMMENT.

MINIMIZE CONSIDERED

MURRAY

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